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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/748,829 Confirmation No.: 7169
Filed: December 29, 2003
First Named Inventor: Weidong Yang
Title: Local Process Variation Correction for Overlay Measurement
Art Unit: 2624 Examiner: Dennis Rosario
Atty Docket: NAN066 US

Saratoga, California
February 2, 2009

Mail Stop Petitions
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO THE DIRECTOR UNDER 37 C.F.R. §1.181
OR IN THE ALTERNATIVE
PETITION FOR REVIVAL OF AN APPLICATION UNDER 37 C.F.R. §1.137(b)

Dear Sir:

Petition Under 37 C.F.R. §1.181

Applicants hereby petition the Director to invoke supervisory authority under 37 C.F.R. §1.181 in the above-identified patent application to accept Applicants' issue fee transmittal and payment, which Applicants' attorney attempted to timely file with the U.S. Patent and Trademark Office ("USPTO") via facsimile on January 16, 2009.

Applicants received the Notice of Allowance from the Examiner in this application, having a mailing date of October 21, 2008. The Issue Fee was due on January 21, 2009.

On January 16, 2009, attorney for Applicants filed the Issue Fee Transmittal and PTO-2028, along with a Transmittal Form, in the USPTO, via facsimile. The Transmittal Form indicated that a Fee Transmittal Form was attached and included an authorization for the Commissioner to charge any additional fees due to the deposit account of Applicants' attorneys. Attached are copies of the originally filed Transmittal form, Part B – Fee(s) Transmittal, and PTO-2038 form as filed January 16, 2009, as well as the Auto-Reply Facsimile Transmission, received from the USPTO on January 16, 2009. The Auto-Reply

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Facsimile Transmission indicates that 2 pages were received by the USPTO, but it escaped observation that the pages received by the USPTO did not match the pages transmitted.

On February 2, 2009, it was discovered that the Issue Fee facsimile transmission did not go through correctly and completely. The first page of the facsimile transmittal, i.e., the Transmittal Form, was received by the Office, but the "Part B - Fee(s) Transmittal" was cut off at the top, below the mailing address for the USPTO, and the PTO-2038 was not received by the Office at all. Copies of the Transmittal Form and the Part B - Fee(s) Transmittal as received by the USPTO, and downloaded via PAIR, are attached hereto.

Applicants petition the Director to treat the Issue Fee transmittal filed on January 16, 2009, as a timely filed response to the Notice of Allowance. The Transmittal Form and the portion of the Part B - Fee(s) Transmittal, which were received by the USPTO, on January 16 evidence Applicants good faith attempt to properly and timely file the Issue Fee payment.

Additionally, Applicants submit that the Transmittal Form provided authorization to charge a deposit account for any fees and indicated that a Fee Transmittal Form was attached, and in fact, the top portion of the Part B - Fee(s) Transmittal was received by the USPTO. Thus, it should be clear from the forms that were actually received by the USPTO, that Applicants were responding to the Notice of Allowance and in fact tendered the necessary issue fee. Accordingly, Applicants request that the Transmittal Form with its payment authorization, should be treated as the required Issue Fee Payment and therefore the above-identified application is not abandoned.

Applicants believe that no Petition fee is necessary under 37 C.F.R. §1.181, but should Applicants be mistaken or any additional fees be necessary, the undersigned authorizes the Commissioner to charge any necessary fees due to Deposit Account 50-2263.

Petition Under 37 C.F.R. §1.137(b)

Should the Director deny the Petition under 37 C.F.R. §1.181, and therefore, find that the above-identified application is abandoned, Applicants hereby Petitions for Revival of this Application under 37 C.F.R. §1.137(b).

1. Petition Fee

Applicant is a small entity. The undersigned authorizes the Commissioner to charge the small entity fee of \$770 and any other necessary fees to Deposit Account 50-2263.

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2. Reply and/or Fee

Payment of the Issue Fee of \$755 is provided for in the attached copies of the Part B – Fee(s) Transmittal and PTO-2038.

3. Terminal Disclaimer

Applicants submit that since this utility application was filed on or after June 8, 1995, no terminal disclaimer is required.

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office to the fax number 571-273-8300 on the below date.

Michael J. Halbert 2-2-09
Attorney for Applicant(s) Date of Signature

Respectfully submitted,

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